California Mental Health Planning Council

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May 17, 2004

Michael E. Alpert, Chairman
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Dear Mr. Alpert:

The California Mental Health Planning Council (CMHPC) has reviewed your report, "Real Lives, Real Reforms: Improving Health and Human Services." The report contains findings and recommendations for reforming state government that merit consideration. However, we are very concerned about the inaccuracies and misrepresentations contained in the report related to our organization.

To begin with, we are concerned about the methodology of your performance review. We were not informed that this review was being conducted. We did not receive notice of any of the public hearings that are described in the Introduction. We did not know that our performance was being evaluated, and we did not have any opportunity to respond to the critique of our performance prior to the publication of this report. With any governmental performance review with which we are familiar, this step is standard procedure.

We will first discuss some activities with which we are involved that are examples of the reforms that you recommend be implemented, and then we will address the problems you allege exist with our performance.

Examples of Best Practices

PL 106-310 requires that every state have a planning council as a condition for receiving the Substance Abuse and Mental Health Services Administration (SAMHSA) Block Grant. California receives approximately $55 million annually from this source. The CMHPC's operations are funded exclusively from the SAMHSA Block Grant–no State General Funds are expended on our activities. However, we perform a number of state-mandated functions, which will be described in this letter. Leveraging federal funds to perform state functions is actually an example of sound management of limited fiscal resources and maximizing use of federal funds–two principles that your report endorses.

One of our additional state duties relates to the development and use of performance indicators. We have been engaged in this work with the DMH since the enactment of Program Realignment. You indicate that the DMH is only engaged in monitoring cost reporting from the counties rather than effective use of performance outcome data for system accountability. In fact, we have been involved with the DMH's State Quality Improvement Council, which is using the Client Services and Information System and the Medi-Cal Paid Claims data to construct performance indicators to examine penetration rates, rehospitalization, and timeliness of follow-up appointments for all counties in the State. A report to the Legislature, which was based on this work, was recognized as being a substantial contribution to understanding and improving the quality of the mental health system. In addition, we are involved in an effort to use the seminal work of the Institute of Medicine's *Crossing the Quality Chasm: A New Health System for the 21st Century* to further improve quality and oversight of the mental health system. We are cited in a national publication, "From Policy To Service: A Quality Vision

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for Behavioral Health," (Daniels & Adams, 2004) for our work in using this new paradigm to examine how financing strategies might be used to improve the quality of care. We think this effort is an example of your basic conclusion that funding should improve outcomes.

Your report also recommends that state-level bodies should be addressing the dramatic shortages in health and human services workers. The CMHPC has been a leader in this area. We have conducted a Human Resources Project for the past four years. We identified this as a critical issue facing the mental health system and proposed to the DMH that it fund us to work on this special project. These funds are also from the SAMHSA Block Grant. We are the only group at the state level in the mental health system providing leadership on this issue. We are focusing on increasing the availability of multicultural and multilingual staff at all occupational levels for the mental health workforce. We are collaborating with other state departments, county mental health programs, community-based agencies, postsecondary institutions, and private foundations in this effort. We have produced reports, identified model programs, and developed resource materials. Our efforts have been recognized nationally, and we are disseminating our strategies and results to other states at their request.

Appointing Authority Issue

The report charges that the CMHPC has a number of deficits, including operating under a conflict of interest that compromises our value as an oversight body because the department that we oversee appoints our members. This charge is merely asserted. No evidence supports it. Members of the Little Hoover Commission or its staff have not attended any of our quarterly meetings to witness the questioning to which Dr. Mayberg, the State Director of Mental Health, is subjected at each meeting about the policies and activities of the State Department of Mental Health. They did not request to examine any of our correspondence to the Legislature on the Administration's budget or legislative proposals over the last ten years of our operations. One would assume that some review of our operations would be necessary to reach the conclusion that we were an ineffective oversight body.

On the contrary, the very day that our staff received your report, we were preparing a letter to Senator Westly Chesbro, Chairman of the Senate Budget and Fiscal Review Committee, opposing the DMH's proposal for rebasing the Medi-Cal State Maximum Allowance. Several weeks before that at our April Planning Council meeting, our Quality Improvement Committee reviewed the Administration's proposal to cap admissions of patients who are Incompetent to Stand Trial and who are Not Guilty by Reason of Insanity to state hospitals. Not only did we vote to oppose that proposal, we came up with an alternative policy recommendation that would be more effective that we sent to the DMH. We would be happy to provide you with copies of any of these recommendations should you be interested. We will not continue with a laundry list of positions we have taken in opposition of the Administration. The essential point is that both our federal and state mandates require that we advocate on behalf of persons who have serious mental illnesses and serious emotional disturbances, and that is the mandate that guides all our actions.

You also allege that we do not provide adequate oversight to ensure that clients are receiving care. We call your attention to the *California Mental Health Master Plan: A Vision for California,* which we authored and published in March 2003. Chapter 3 of that plan documents the unmet need for mental health services in the State as over 600,000 persons. This finding is based on a methodology that we developed and executed because of our concern for persons with serious mental illness and children with serious emotional disturbances. This

document also provides a comprehensive review of systems of care for each target population in the State. We identify barriers to care in each of those chapters and provide recommendations to address those barriers. We have also prioritized those recommendations, and they are serving as an action plan for our System of Care committees. We are surprised that you would doubt our commitment to oversight of client care since you actually cite the *Master Plan* yourself on page 48 of the report to prove that no county has implemented a full range of services.

Lassen County Investigation

The final criticism relates to an incident concerning Lassen County in which you allege that because we declined to visit the county we "did not fulfill our mission to monitor care." We disagree with your characterization of our responsibility as being "to monitor care." We interpret Section 5772 of Welfare and Institutions Code as requiring that we provide oversight and assure accountability for the public mental health system. "Monitoring" connotes the kind of field investigations and on-site reviews that the DMH conducts to assure that county mental health programs are complying with all statutes and regulations that govern the Medi-Cal program. It has sufficient employees to accomplish those tasks. "Oversight" connotes assuring that systems and procedures are in place for monitoring compliance with statutes and regulations, that clients have recourse to submit grievances, that procedures are followed, and that plans of correction are required when deficiencies are noted. The CMHPC has 3 professional staff. Performing oversight functions are the only meaningful review that is within with the scope of our fiscal and personnel resources.

We believe that in the case of Lassen County we fulfilled our oversight responsibilities. We would have appreciated the opportunity to have a public policy discussion of the role of a state level advisory body on this issue of "monitoring" versus "oversight." However, no member of the Little Hoover Commission or its staff ever came to a CMHPC meeting to discuss its views with us. We had several telephone calls from one of your staff. We responded to his requests for additional information, and we thought this matter was resolved until we saw this issue raised again in this report without any notice.

We will summarize the investigation that we conducted of Lassen County Mental Health Department. There were two issues that were raised to us via a telephone complaint to our staff and during a public comment period at one of our meetings:

1. The Lassen County Mental Health Department was not serving children age 0-5.
2. Because members of the local mental health board (MHB) had complained about the issue, the MHB had been disbanded and a new MHB had been appointed.

On Issue 1, the DMH conducted a special focused review using its Medi-Cal onsite review staff to investigate the issue concerning access to care for children age 0-5. The investigation did not substantiate the allegation. In our role as an oversight body, we reviewed the policies, procedures, and methodology of the focused review. We determined that the investigation had been conducted adequately and in a professional manner. This is the statement that is cited in your report.

The Department's focused review found that 11 children had been served. You report that the prevalence rate for serious emotional disturbance indicates that 10 to 20 times as many children should have been served in Lassen County. However, access to mental health services and the rate of children served has to be considered in relation to access to services

statewide. In the unmet need chapter in the *Master Plan*, we already established that statewide at least 300,000 children and youth were not receiving mental health services. In comparing access to services for children age 0-5, rate of access in Lassen County is consistent with the rate statewide. The statewide rate for access to mental health services for children age 0-5 is 11.0 percent, and Lassen County's rate is 12.6 percent.

On Issue 2, we contacted the Director of the Lassen County Mental Health Department and determined that the local mental health board had been disbanded and a new board had been appointed. We requested a legal opinion from the Department of Mental Health about whether the Lassen County Board of Supervisors had the legal authority to remove the members of the MHB. The Department's legal staff advised us that, since it did not know the facts surrounding the removal of these members from their positions, we contact the County Counsel in Lassen County.

We did contact the Lassen County Counsel to inquire about the circumstances surrounding the removal of the mental health board members. The County Counsel reported that the statute governing the appointment of mental health board members did not require that "cause" must be shown for removal of appointees from the board. In that case, the County Counsel further explained, the common law rule is that the power to appoint includes the power to remove when there are no restrictive provisions in the statute. Moreover, the MHB's Bylaws also indicated that members serve terms of three years "unless removed from office by the Board of Supervisors." This provision, according to the County Counsel, tacitly acknowledged the absence of "removal for cause" requirements. However, the County Counsel also pointed out that, if cause for removal were required, the Board of Supervisors felt they had grounds, indicating that the members of the MHB had been removed from their positions for violations of the Brown Act, attempts to obtain and discuss confidential personnel and client information, and acts in excess of the MHB's statute. Consequently, we determined that their removal from their positions was not unjustified. In total, our investigations of the Lassen County issues spanned over 10 months. We feel that we devoted substantial resources to these issues and investigated the matters thoroughly and responsibly.

We regret that we did not have the opportunity to discuss all these issues with you prior to the release of the report. We would welcome an opportunity to discuss matters of mutual interest in the future. If you have any questions, please contact our Executive Officer, Ann Arneill-Py, at (916) 654-3585 or by email at aarneill@dmhhq.state.ca.us.

Sincerely,

Edward Walker
Chairperson

cc: The Honorable Arnold Schwarzenegger
Governor of California

The Honorable John L. Burton
President pro Tempore of the Senate

The Honorable Westly Chesbro, Chair

Senate Budget and Fiscal Review Committee

The Honorable Deborah Ortiz, Chair
Senate Health and Human Services Committee and Members of the Senate Health and Human Services Committee

The Honorable Fabian Nunez
Speaker of the Assembly

The Honorable James L. Brulte
Senate Minority Leader

The Honorable Kevin McCarthy
Assembly Minority Leader

The Honorable Darrell Steinberg, Chair
Assembly Budget Committee

The Honorable Rebecca Cohn, Chair
Assembly Health Committee and Assembly Health Committee Members

S. Kimberly Belshé
Secretary, Health and Human Services Agency

Stephen W. Mayberg, PhD
Director, Department of Mental Health